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No. [redacted] 108

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# In The
# Supreme Court of the United States
OCTOBER TERM, 1966

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WALTER PETRONIA and ROSE PETRONIA his wife;
MORRIS K. NAINOA and MARCELLA NAINOA, his wife;
CHARLES FRANKLE and HILDA FRANKLE, his wife;
and JOHN W. MASSEY, *Appellants,*

v.

STATE OF ALASKA, one of the United States,
*Appellee.*

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## BRIEF OPPOSING MOTION TO DISMISS

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THE ARGUS PRESS SEATTLE, WASHINGTON

No. 1314

# In The
# Supreme Court of the United States
OCTOBER TERM, 1966

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WALTER PETRONIA and ROSE PETRONIA his wife;
MORRIS K. NAINOA and MARCELLA NAINOA, his wife;
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# In The
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| WALTER PETRONIA and ROSE PETRONIA his wife; MOSES K. NAINOA and MARCELLA NAINOA, his wife; CHARLES FRANKLE and HILDA FRANKLE, his wife; and JOHN W. MASSEY. *Appellants,* v. STATE OF ALASKA, one of the United States *Appellee.* | No. 1314 |

## BRIEF OPPOSING MOTION TO DISMISS

The appellants herein file this brief pursuant to Rule 16.3 of Rules of the Supreme Court in answer to the appellee's motion to dismiss.

### I.

### APPELLEE'S MOTION TO DISMISS

Appellee's motion is based solely upon its assertion that no substantial federal question is raised.

Appellee's motion raises no issues toward which appellants have not already addressed themselves in the jurisdictional statement.

Appelle states on page 7 of its motion "The line of cases which the appellee believes have substantially resolved the questions here presented culminated in the *Northwestern States Portland Cement Company v. Minnesota,* 358 US 450, 79 S.Ct. 357, (1959)."

It is that very case which appellants submit reaffirms the existence of the substantial federal question in this case unless appellee's apparent contention that this court's discussion and review of authorities in that case is meaningless is to be accepted.

At page 458 of the report of that case in 358 US, the majority of this court said:

> "In keeping therewith a state 'cannot impose taxes upon persons passing through the state, or coming into it merely for temporary purposes' such as itinerate drummers . . . "

Certainly seamen fall within the classification of persons involved in that statement who are "passing through the state, or coming into it merely for temporary purposes . . . ".

Furthermore, the tax imposed here is sought to be imposed upon employees in that type of commerce which has received from this court the greatest constitutional protection of any form of commerce, to-wit, ocean-going commerce. *Pullman Car Palace Car Co. v. Pennsylvania,* 114 US 18, 11 S.Ct. 876.

## II.

## A FACTUAL CORRECTION

On page 4 of appellee's motion, the appellee (as did the Washington Supreme Court) incorrectly state that the respective percentage of income taxed of the individual appellants is the percentage of his income *during the year in question.* (Emphasis supplied,) This is not accurate. The stipulation of facts on which the case was tried and which was a part of the statement of facts in the State Supreme Court and is on file in the record of this court, states on pages 7, 8, 9 and 10 with reference to the respective appellants that the respective percentages taxed was that part of his voyage pay for "services on board *these vessels*" which was earned in the waters of the State of Alaska. (Emphasis supplied) The record does not further indicate what other vessels the appellants shipped on or how much they earned on such other vessels so there is no stipulation as to what percentage of the appellants annual income was earned in waters of Alaska. It is, however, inacurrate, as the Washington State Supreme Court and the appellee do, to state that it is a stipulation that this is the percentage of their total annual pay. It is only the percentage of the appellants' pay earned aboard those vessels on which they shipped that year which went to Alaska and on which tax was sought to be imposed.

## III.

## CONCLUSION

It is respectfully submitted that appellee's motion to dismiss should be denied.

Respectfully submitted,

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1411 Fourth Avenue Bldg.
Seattle, Washington

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967.

## PETRONIA ET AL. v. ALASKA.

APPEAL FROM THE SUPREME COURT OF WASHINGTON.

No. 108. Decided October 9, 1967.

PER CURIAM.

The motion to dismiss is granted and the appeal is dismissed for want of a substantial federal question.

MR. JUSTICE DOUGLAS is of the opinion that probable jurisdiction should be noted.